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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 RICHARD BAEK, an individual;
12 BAEK 153, LLC, an Oregon
13 Limited Liability Company;
14 and PACIFIC COMMERCIAL GROUP,
15 LLC, an Oregon Limited
16 Liability Company,

NO. 2:15-cv-1425 WBS DB

MEMORANDUM AND ORDER

17 Plaintiffs,

18 v.

19 JOHN O. HALVORSON, an
20 individual; DAN L. HALVORSON,
21 an individual; and JERRY ANN
22 RANDALL, individually and as
23 trustee of the JERRY ANN
24 RANDALL TRUST dated July 30,
2017; PCC FUND 1, LLC, a
California Limited Liability
Company; GRANITE BAY PARTNERS
II, LLC, a Delaware Limited
Liability Company; JH RE
HOLDINGS, LLC, a Delaware
Limited Liability Company;
COMMERCIAL INCOME ADVISORS,
INC., a California
Corporation; and DOES 1-5

25 Defendants.

26
27 Presently before the court are plaintiffs' Motion for
28 Stay Relief to Voluntarily Dismiss Non-Answering Defendants

1 (Docket No. 17); plaintiffs' Motion for Order to Confirm the
2 Validity of This Court's Prior Orders and to Enforce Such Orders
3 (Docket No. 18); and Wenete M.A. Kosmala's, the chapter 7 trustee
4 ("Trustee") of the bankruptcy estate of defendant John O.
5 Halvorson, Motion for Order Substituting Trustee as Real Party in
6 Interest and Changing Venue to the United States Central District
7 of California (Docket No. 39).

8 I. Factual and Procedural Background

9 Defendant John Halvorson ("Halvorson") and Grace Baek
10 were married in 2005. (Trustee's Opp'n, Ex. 8 (Bankruptcy
11 Court's Order on Unclear Cleans) (Docket No. 29) at 123.)
12 Halvorson and Grace Baek's brother, plaintiff Richard Baek,
13 started a company together called Pacific Commercial Group, LLC
14 in 2007. (Id.) In December 2012, Halvorson filed for divorce
15 against Grace Baek in California state court. (Id.) Halvorson
16 then initiated a case in Multnomah County Circuit Court, Oregon
17 claiming that he was owed a commission on the "Beaverton
18 property" sale and seeking a declaratory judgment establishing
19 his ownership interest in Baek family investment companies. (Id.
20 at 124.) In response, the Baeks initiated three actions against
21 Halvorson alleging that he had interfered with the sale of the
22 Beaverton property and that he had diverted company funds to his
23 own use. (Id.)

24 During the course of this litigation, Halvorson forged
25 his wife's signature on a purported amended prenuptial agreement
26 and testified to its purported authenticity under oath. (Id.)
27 The Baeks' attorney, Corey Tolliver ("Tolliver"), discovered the
28 forgery. (Id.) In February 2015 the Oregon Circuit Court found

1 Halvorson in contempt of court for this forgery and dismissed all
2 of his claims against the Baeks. (*Id.*) The total amount of the
3 Oregon state court judgment in favor of the Baeks against
4 Halvorson was \$785,972.75 (the "Oregon Judgment"). (*Id.* at 125.)
5 In addition to this litigation, Richard Baek also filed a police
6 report against Halvorson in 2013 alleging embezzlement. (*Id.*)
7 After discovering the forgery in 2014, he filed a second police
8 report. (*Id.*)

9 The Baeks made a settlement offer to Halvorson on June
10 25, 2014 which required, among other things, that Halvorson sell
11 his house in Stockton, California (the "Stockton property") where
12 his mother, defendant Jerry Ann Randall ("Randall") had been
13 living for forty years, and pay all net proceeds to the Baeks.
14 (*Id.*) Halvorson rejected the offer. (*Id.* at 126.)

15 Following the entry of the Oregon Judgment, on February
16 25, 2015, an Application for Entry of Judgment on Sister-State
17 Judgment was filed in Superior Court of California, County of
18 Orange, seeking domestication of the Oregon Judgment in
19 California. (*Id.*) The enforcement of the domesticated judgment
20 was stayed. (*Id.*) On April 2, 2015, Halvorson filed an ex parte
21 application in Orange County Superior Court to further extend the
22 stay on the ground that the Oregon Judgment was on appeal. (*Id.*
23 at 126.)

24 At this point, in order to protect Randall's interest
25 in the Stockton property, Halvorson and Randall signed a
26 promissory note with Dan Halvorson, Halvorson's brother, as
27 payee. (*Id.* at 127.) The promissory note was secured by a deed
28 of trust and recorded in the San Joaquin County Recorder's office

1 on April 3, 2015. (*Id.*)

2 The Baeks discovered this deed of trust against the
3 Stockton property and responded by filing the present action in
4 this court on July 2, 2015 against Halvorson, Randall, and Dan
5 Halvorson. (Compl. (Docket No. 1).) On July 13, 2015,
6 plaintiffs filed a First Amended Complaint ("FAC") naming
7 entities related to defendant John Halvorson--PCC Fund 1, LLC;
8 Granite Bay Partners II, LLC; JH RE Holdings, LLC; and Commercial
9 Income Advisors, Inc.--as additional defendants ("entity
10 defendants") and alleging intentional fraudulent transfer,
11 constructive fraudulent transfer, fraudulent conveyance,
12 conspiracy to commit fraudulent conveyance, and aiding and
13 abetting fraudulent conveyance. (FAC (Docket No. 4).)

14 On July 16, 2015 Halvorson filed a voluntary petition
15 for relief under chapter 7 of the Bankruptcy Code, thereby
16 commencing his bankruptcy case in the Central District of
17 California, Sana Ana Division. (Trustee's Opp'n, Ex. 8 at 127.)
18 Wenete Kosmala was appointed chapter 7 trustee. (*Id.*) On July
19 20, 2015, Halvorson filed a Notice of Bankruptcy Filing,
20 notifying this court that he had filed a voluntary chapter 7
21 petition in the Bankruptcy Court for the Central District of
22 California. (Docket No. 6.) On August 10, 2015, Dan Halvorson
23 and Jerry Ann Randall filed an Answer. (Docket No. 8.) Neither
24 John Halvorson nor the entity defendants ever filed an answer.

25 On October 2, 2015, Grace Baek and Richard Baek filed
26 another complaint in the Bankruptcy Court against Halvorson
27 seeking a determination that his liability to them under the
28 Oregon Judgment was excepted from discharge, thereby commencing

1 another adversary proceeding (the "1382 Action"). (Trustee's
2 Opp'n, Ex. 8 at 128.)

3 On October 9, 2015, plaintiffs and the answering
4 defendants--Danny Halvorson and Jerry Ann Randall--entered into a
5 stipulation to stay this case pending the resolution of John
6 Halvorson's bankruptcy case. (Docket No. 11.) The stipulation
7 was approved on October 13, 2015, (Docket No. 12) and the case
8 has remained stayed since then.

9 On October 14, 2015, the Bankruptcy Trustee filed with
10 the Bankruptcy Court in the Central District of California a
11 Notice of Removal of United States Eastern District Court Action
12 to Bankruptcy Court. (Trustee's Opp'n, Ex. 8 at 128.) This
13 purportedly removed Eastern District of California case was re-
14 designated as Adversary Proceeding No. 8:15-ap-1391 MW and
15 assigned to Bankruptcy Judge Wallace (the "1391 Action"). (Id.)
16 The causes of action were deemed to involve administration of
17 bankruptcy estate property and proceedings to determine, avoid,
18 or recover fraudulent conveyances. (Id.) Thus, the Trustee
19 substituted in as real party in interest plaintiff as to all
20 causes of action other than the cause of action for conspiracy
21 and aiding and abetting. (Id.)

22 On October 21, 2015, the Bankruptcy Trustee submitted a
23 separate Notice of Removal to the Clerk's office in the Eastern
24 District of California. (Docket No. 13.) However, the Clerk
25 correctly modified the docket entry for the removal filing,
26 stating that the court would disregard the notice and instructing
27 the Trustee to initiate a new action. (Id.) Despite this
28 court's notice that it would "disregard" the Notice of Removal,

1 the purportedly "removed" case continued to be litigated in the
2 Bankruptcy Court for over two years.

3 On November 2, 2015, John Halvorson received a chapter
4 7 discharge. (See No. 8:15-bk-13556 MW, Docket No. 58 (Discharge
5 of Debtor).) As a result of this, all of the claims asserted
6 against him in this case were discharged. (See Docket No. 18-1
7 (RJN Ex. 9) ("John Halvorson is not . . . a party to the
8 Fraudulent Transfer action . . . as a result of his chapter 7
9 discharge).)

10 On November 25, 2015, Grace Baek filed another
11 complaint in the Bankruptcy Court against Halvorson and the
12 Trustee, commencing Adversary Proceeding No. 8:15-ap-1454 MW (the
13 "1454 Action") seeking a declaratory judgment as to what is and
14 what is not property of the bankruptcy estate. (Trustee's Opp'n,
15 Ex. 8 at 128.) This action was also assigned to Bankruptcy Judge
16 Wallace, who was already overseeing the purportedly removed
17 Eastern District case.

18 The Central District Bankruptcy Court held a status
19 conference for the 1391 Action and the 1454 Action on March 2,
20 2016. (Id. at 129.) On March 4, 2016, the Bankruptcy Court
21 ordered that both cases--the purportedly removed case and the
22 additional adversary proceeding initiated by Grace Baek--go to
23 mediation. (Id.) The mediation between the Baeks and Halvorson
24 was scheduled for May 27, 2016 in front of Judge Meredith A.
25 Jury, a United States Bankruptcy Judge for the Central District
26 of California. (Id.)

27 Throughout this time, the criminal investigation
28 against Halvorson, which had been initiated by the Baeks,

1 continued to move forward. (*Id.* at 130.) On May 9, 2016,
2 Halvorson was indicted for perjury, forgery, identity theft,
3 attempted aggravated identity theft, and attempted aggravated
4 theft in the first degree. (*Id.*) The grand jury proceedings
5 were covered by Deputy District Attorney Kevin Demer ("Demer").
6 (*Id.*)

7 Throughout May of 2016, Tolliver, the Baeks' attorney,
8 had numerous discussions with Demer regarding having Halvorson
9 arrested. (*Id.* at 131.) As part of these conversations,
10 Tolliver told Demer that the Baeks had offered to pay for the
11 cost of extradition in order to have Halvorson arrested. (*Id.*)
12 During a May 23, 2016 conversation, Tolliver informed Demer that
13 John Halvorson had been ordered to appear at a mediation at the
14 Bankruptcy Court in Riverside, California on May 27, 2016. (*Id.*)
15 On May 27, during the mediation in Judge Jury's courtroom, Demer
16 had Halvorson arrested. (*Id.* at 134.) After Halvorson was
17 arrested, the mediation ended without a settlement among any of
18 the parties. (*Id.*)

19 At this point, Bankruptcy Judge Wallace apparently
20 realized that the Baeks had commenced three lawsuits against
21 Halvorson in Oregon state court, had sued Halvorson, his mother,
22 and brother in the United States District Court for the Eastern
23 District of California, and had initiated two additional
24 adversary proceedings against Halvorson in the Bankruptcy Court.
25 (*Id.* at 138.) On June 22, 2016, Judge Wallace held a status
26 conference with respect to the 1391 and 1454 Actions, at which
27 point he learned that Halvorson had been arrested during the
28 mediation. (*Id.*)

1 The Bankruptcy Court then issued an Order After Status
2 Conference raising the unclean hands doctrine sua sponte and
3 staying the adversary proceedings except as to the issue of
4 whether any party to the mediation was guilty of unclean hands by
5 reason of taking actions that had the effect of sabotaging the
6 mediation through Halvorson's arrest. (Id.) The Bankruptcy
7 Court planned to hold a bifurcated trial, with the first phase
8 addressing the issue of unclean hands. (Id.)

9 The Baeks moved for partial summary judgment and also
10 moved to dismiss the unclean hands affirmative defense. (Id. at
11 139.) The Bankruptcy Court rejected these motions. (Id.) On
12 July 11, 2017 the Baeks filed motions seeking the permission of
13 the United States District Court for the Central District of
14 California to take an interlocutory appeal of the Bankruptcy
15 Court's orders denying the motions. (Id.) The District Court
16 denied those motions. (Id.)

17 A bench trial was held in the Circuit Court of the
18 State of Oregon between July 31, 2017 and August 4, 2017 on the
19 criminal charges against Halvorson. (Id.) He was convicted on
20 forgery and two counts of identity theft, and acquitted of
21 perjury. (Id.)

22 On October 6, 2017, in an attempt to avoid the trial on
23 unclean hands scheduled for later that month, the Baeks executed
24 a settlement agreement with the Trustee providing for the Baeks'
25 purchase and acquisition of the Trustee's rights, claims, and
26 interests in the 1454 Action and the execution and filing of a
27 stipulated judgment in the 1391 Action (the purportedly "removed"
28 action). (Id.) The Trustee filed a motion to continue the

1 bifurcated trial on unclean hands until after the motion to
2 approve the settlement was determined. (Id.) Judge Wallace
3 denied the motion for continuance. (Id. at 140.)

4 The trial on unclean hands, overseen by Bankruptcy
5 Judge Wallace, commenced on October 30, 2017 and ran through
6 November 3, 2017. (Id.) Mere minutes after the trial began, the
7 Baeks filed an Emergency Motion to Recuse Bankruptcy Judge
8 Wallace in the Bankruptcy Court. (Id.) On November 17, 2017,
9 the Baeks filed a Motion to Withdraw the Reference in the 1391
10 Action and 1454 Action (the "Reference Withdrawal Motion") in the
11 District Court. (Id.) The Recusal Motion was heard by the
12 Bankruptcy Judge Theodor C. Albert on January 9, 2018 and denied
13 on January 23, 2018. (Id.) The Reference Withdrawal Motion was
14 denied by United States District Judge James V. Selna on January
15 29, 2018. (Id.)

16 The Baeks then filed a notice of appeal to the District
17 Court on the denial of the Recusal Motion. (Id. at 141.)
18 Additionally, they filed in the Bankruptcy Court an emergency
19 motion for a stay of the effectiveness of the order denying the
20 recusal motion (the "Stay Motion") and a motion for certification
21 of a direct appeal (the "Certification Motion") to the United
22 States Court of Appeals for the Ninth Circuit. (Id.) Both
23 motions were assigned to Bankruptcy Judge Albert, and he denied
24 them both. (Id.) The Baeks filed a Petition for Writ of
25 Mandamus with the Ninth Circuit on February 2, 2018. (Id.)

26 Judge Wallace entered a Memorandum Decision in the
27 unclean hands case on February 14, 2018, in which he found the
28 Baeks guilty of unclean hands against the Trustee, Halvorson, Dan

1 Halvorson, and Randall. (*Id.* at 166.) In doing so, Judge
2 Wallace explained that his court would "shut its doors against
3 the [Baeks], and . . . refuse to interfere on their behalf, to
4 acknowledge their right or to award them any remedy in these
5 adversary proceedings." (*Id.* at 123.)

6 Two weeks later, on February 28, 2018, after entry of
7 its Memorandum of Decision, the Bankruptcy Court held a status
8 conference during which it discussed the procedural defect in the
9 initial removal of the 1391 Action and what impact, if any, it
10 had on the Bankruptcy Court's jurisdiction over the Adversary
11 Proceeding. Judge Wallace expressed "grave doubt" as to whether
12 the 1391 Action was ever removed to his court. (Trustee's Opp'n,
13 Ex. 9 (Order Continuing Stay of Memorandum Decision).) On April
14 26, 2018, the Bankruptcy Court declared that it would stay the
15 Memorandum Decision "so that the Eastern District may hear and
16 determine the [removal issue]." (*Id.*)

17 On June 11, 2018, this court held a hearing on
18 plaintiffs' Motion for Stay Relief to Voluntarily Dismiss Non-
19 Answering Defendants and plaintiffs' Motion for Order to Confirm
20 the Validity of this Court's Prior Orders and Enforce Such
21 Orders. Counsel and the court agreed to continue the hearing on
22 these Motions to August 6, 2018, to be heard together with the
23 Trustee's Motion to Substitute Trustee as Real Party in Interest
24 and Motion to Change Venue to the United States District Court
25 Central District of California.

26 **II. Motion to Change Venue**

27 Because the Trustee is not a party to this action, the
28 Trustee has no standing to make a motion to change venue until

1 and unless the Trustee is granted leave to intervene or
2 substitute as a party to this action. However, the Trustee's
3 motion is joined in by the answering defendants, who do have
4 standing to make the motion. Accordingly, the court considers
5 the motion.

6 The answering defendants seek to transfer venue to the
7 Central District of California. The first question is whether
8 the Central District of California is a judicial district where
9 the action might have been brought within the meaning of 28
10 U.S.C. § 1404(a), which states that "[f]or the convenience of
11 parties and witnesses, in the interest of justice, a district
12 court may transfer any civil action to any other district or
13 division where it might have been brought or to any district or
14 division to which all parties have consented."

15 To answer that question, the court must look to facts
16 as they existed at the time the action was brought. See, e.g.,
17 Hatch v. Reliance Ins. Co., 758 F.2d 409, 414 (9th Cir. 1985)
18 ("In determinizing whether an action 'might have been brought' in
19 a district, the court looks to whether the action initially could
20 have been commenced in that district."); see also Hoffman v.
21 Blaski, 363 U.S. 335, 343 (1960) (explaining that "[i]n the
22 normal meaning of words this language of Section 1404(a) directs
23 the attention of the judge who is considering a transfer to the
24 situation which existed when suit was instituted").

25 Accordingly, looking to the facts at the time this
26 action was brought, Halvorson was a party defendant and resided
27 in the Central District of California, and all other defendants
28 resided within the state of California. Therefore, plaintiffs

1 could have properly filed this action in the Central District of
2 California. See 28 U.S.C. § 1391(b) (A civil action may be
3 brought in "(1) a judicial district in which any defendant
4 resides, if all defendants are residents of the State in which
5 the district is located").

6 In order to determine whether the court should exercise
7 its discretion to transfer this case to the Central District,
8 however, the court looks to the facts as they exist now.
9 Although this court continues to reiterate that the 1391 Action
10 was never properly removed to the Bankruptcy Court in the Central
11 District, it cannot deny the fact that the case and related
12 issues have been extensively litigated there, and a trial has
13 already purportedly been held. There is no doubt that the
14 purported trial, although the Bankruptcy Court never had proper
15 jurisdiction to hold that trial, dealt with the very issues
16 currently pending before this court.

17 Additionally, the Bankruptcy Court, indisputably with
18 jurisdiction, has heard and decided a number of related issues
19 involving similar facts and parties. The 1454 Action, for
20 example, in which Grace Baek seeks a declaratory judgment as to
21 what is and is not property of Halvorson's bankruptcy estate, was
22 properly before Bankruptcy Judge Wallace. Additionally, the 1382
23 Action, also properly before the Bankruptcy Court, was initiated
24 by Grace and Richard Baek in an effort to obtain a determination
25 that Halvorson's liability to them under the Oregon Judgment was
26 exempt from discharge. Of course, Halvorson's bankruptcy case,
27 the reason this case was originally stayed, is also properly
28 pending in the Bankruptcy Court in the Central District.

1 Accordingly, the Bankruptcy Court has been, and
2 continues to be, importantly involved in the circumstances
3 surrounding this case, and over the last two years it has become
4 extremely familiar with the facts of this case. It is
5 indisputable that the Bankruptcy Court and judges within the
6 Central District are now more familiar with the facts of this
7 case than is this court. It would be a waste of time, energy,
8 and money to require this court to attempt to become familiar
9 with the complex and convoluted litigation that has occurred in
10 this case already. Therefore, transferring the venue would
11 conserve judicial resources and promote the interests of justice.

12 Pursuant to Ninth Circuit law, when considering whether
13 to grant a motion to change venue the court should also consider
14 the plaintiff's choice of forum and convenience to witnesses.

15 Jones v. GNC Franchising, 211 F.3d 495, 498-99 (9th Cir. 2000).
16 Here, the court recognizes that plaintiffs request that venue not
17 be transferred. However, Halvorson's bankruptcy proceeding,
18 which remains ongoing although he has been discharged, is in the
19 Central District. Additionally, as explained above, litigation
20 involving precisely the same claims at issue here--whether it was
21 properly removed or not--has been, and continues to be, ongoing
22 within that district. The court concludes that this procedural
23 and factual background outweighs plaintiffs' desire to keep the
24 case in the Eastern District. Thus, the court determines that
25 the Central District of California is the more appropriate venue
26 to handle this matter.

27 Although plaintiffs indicate that defendant Randall has
28 expressed difficulty traveling to the Central District, the court

1 has not been presented with any evidence suggesting that Randall
2 would not also express an inability to travel to Sacramento.
3 Thus, this argument does nothing to convince the court that the
4 Eastern District is a superior venue in which to continue this
5 case. Therefore, the court will grant the Motion to Change
6 Venue.

7 Whether to now properly refer the case to the
8 Bankruptcy Court in the Central District of California, where the
9 litigation purportedly and apparently continues to be ongoing, is
10 not a decision this court can make. Only a district judge in the
11 Central District of California has the power to refer this action
12 to the Bankruptcy Court within that district. This order should
13 accordingly not be construed as suggesting to any judge in the
14 Central District that the matter must be transferred to the
15 Bankruptcy Court, or what effect, if any, that court should give
16 to any proceedings that have already been purportedly held in the
17 Bankruptcy Court.

18 IT IS THEREFORE ORDERED that the Trustee's Motion for
19 Changing Venue (Docket No. 39), which the answering defendants
20 have joined, be, and the same hereby is, GRANTED. In doing so,
21 the court deliberately avoids the question of whether the Trustee
22 should be substituted as the real party in interest or whether
23 the non-answering defendants should be dismissed. Once this case
24 has been transferred, a judge in the Central District of
25 California may answer those questions or, if that court elects to
26 do so, may send the matter to the Bankruptcy Court within that
27 district.

28 All other currently pending motions (Docket Nos. 17,

1 18) are MOOT.

2 Dated: August 10, 2018



3 **WILLIAM B. SHUBB**

4 UNITED STATES DISTRICT JUDGE

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